

REMARKS UNDER 37 CFR § 1.116

Formal Matters

Claims 1-2, 11, 13-30 and 44-45 are pending after entry of the amendments set forth herein. Claims 2, 16-19, 21 and 23-30 are currently withdrawn from consideration.

Claims 1, 11, 13-15, 20, 22 and 44-45 were examined. Claims 1, 11, 13-15, 20, 22 and 44-45 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

In the Official Action of July 17, 2006, the Examiner rejected claims 1, 11, 13-15, 20, 22 and 44-45 under 35 U.S.C. Section 102(b) as being anticipated by Nicholas et al., U.S. Patent No. 5,967,974. The Examiner asserted that Nicholas et al. discloses a transabdominal access system with upper and lower spreader portions 114 and 126, Fig. 3. Applicants respectfully traverse this assertion. Nicholas et al. specifically discloses that the retractor disclosed therein is configured to be placed between the ribs, where first and second hook members engage ribs to spread them apart. There is no disclosure of a transabdominal access system, contrary to the Examiner's assertion.

The Examiner asserted that the apparatus of Nicholas et al. has a depressor portion capable of depressing the diaphragm and the abdominal organs, which the Examiner identified in Fig. 3 as reference numerals 112 and 114. The Examiner further asserted that this depressor portion is flat. Applicants respectfully traverse. As clearly shown in the side view of Fig. 2, components 112 and 114 form a hook. A hook is curved or bent, not flat.

The Examiner asserted that the presence of the hook member 12 would not limit the depression of the diaphragm using the apparatus of Nicholas et al. Applicants respectfully submit that to use the apparatus of Nicholas et al. as suggested by the Examiner would result in the tearing of the diaphragm by driving the hook member 12 into the diaphragm. As such, the apparatus of Nicholas et al. does not have a depressor surface adapted to engage the diaphragm and abdominal organs to depress the abdomen.

Further, claim 1 has been amended above to recite that the upper spreader portion comprises a hook mounted to a retraction actuator via a swivel. It is respectfully submitted that Nicholas et al. clearly fails to disclose this structure.

Claim 11 has been amended above to further recite that the upper spreader portion includes a pair of hooks configured for lifting the sternal area of the patient. It is respectfully submitted that Nicholas et al. clearly fails to disclose this structure.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 11, 13-15, 20, 22 and 44-45 under 35 U.S.C. Section 102(b) as being anticipated by Nicholas et al., U.S. Patent No. 5,967,974, as being inappropriate.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

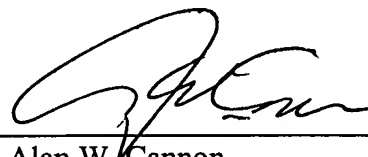
The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-036.

Respectfully submitted,
LAW OFFICE OF ALAN W. CANNON

Date: _____

9/20/06

By: _____



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